

IN THE MAGISTRATE'S COURT**AT SUVA,FIJI****CRIMINAL CASE NO: 1608 of 2009****BETWEEN: THE STATE****PROSECUTION****AND: MARY MEGDERLLEN****ACCUSED****BEFORE: Resident Magistrate Mr. Thushara Rajasinghe,****COUNSEL: Mrs. Nancy Tikoisuva for the Prosecution,****Mr. Samad for the Accused in person,****Date of the Judgment: 17th of May 2013.**

JUDGMENT

1. The accused person is charged with one count of "Making a False Statement to Obtain a Passport" contrary to section 312 of the Penal Code. The particulars of the offence are that,

Merry Magderllen on the 20th day of May 2005 at Suva in the Central Division for the purpose of procuring for herself a passport made a statement that her date of birth was 18/11/1962 which to her knowledge was false”

2. The accused person pleaded not guilty for this offence, wherefore, the case was set down for hearing. During the hearing the Prosecution called 14 witnesses. At the conclusion of the prosecution case the accused gave evidence on oaths and called two more witnesses for the defence. Upon the conclusion of the hearing both parties were invited to file their respective final submission for which they filed accordingly.
3. Section 312 of the Penal Code Act states that;
“Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or for any other person, is guilty of a misdemeanor”.
4. In view of the section 312 of the Penal Code , the main elements of the offence of “ making false statement to obtain a passport” are
 - i. Any Person
 - ii. Make a statement which is to his knowledge untrue,
 - iii. For the purpose of procuring a passport,
5. The prosecution needs to prove beyond reasonable doubt that the statement made by the accused person for the purpose of procuring the passport is untrue to his knowledge. Accordingly the prosecution is not only burden with to prove the falsehood of the statement but also needs to prove that it is untrue to the knowledge of the accused person.

6. Bearing in mind the main elements of the offence of “making false statement to obtain a passport”, I now turn to briefly review the evidence of the prosecution and the defence.
7. The prosecution alleges that the accused person provided a false date of birth as her to obtain the passport No 654442. The prosecution alleges that the accused person’s actual date of birth is not 18/11/1962 which she has given to the immigration department to obtain the said passport and her actual date of birth is 18/11/1955 and she was aware of it. The prosecution contends that its relies on the birth certificate registration Number 721824 in which her father Anthony has registered her birth on 22nd of December 1955 as being the true record of the accused. Further that the subsequent registration done by the accused’s sister in registration Number 141916 under a late registration application was done in order to conceal the real age of the Accused person.
8. The first prosecution witness is Peni Taganenukunu who was the former principle Administration Officer at the Ministry of Justice. He was appointed with three other officers by the Permanent Secretary to the Ministry of Justice to investigate the allegation made by the FNPF against the accused person on her late birth certificate registration Number 1419416. He testified in his evidence that he conducted an investigation into the allegation against the accused and compiled a report with his two other investigators. He further stated in his cross examination that he found that according to his finding during the investigation that the three birth certificates which he uplifted from the Registrar’s office and the teacher’s registration number that he obtained from the Ministry of education belong to a same person and that is the accused.
9. The second prosecution witness is Mrs. Lolohea Baro who is the Acting Registrar General at the Registrar General’s office. She explained the procedure of late birth registration process and confirmed that the accused person’s sister has registered her

date of birth as 18/11/1962 in her late registration application made to the Registrar General's Western Division office in Lautoka.

10. Mrs. Doreen Lata Charan is the third prosecution witness who is a businesswoman from Ba. She knows the accused person over more than fifteen years. She has first met the accused while she was working as law clerk in a law firm in Ba. She further stated that the accused is a teacher and had taught her nieces. She has met the accused in social gathering such as weddings over the past years in her association with the accused. Mrs. Charan testified that she knew that the accused was married to one Vinod Prasad and has a daughter called "Mamtha". She derived this information from the accused herself and from other people. Moreover, she stated that sometimes in 2007, the accused approached her to make a character certificate for her as Mrs. Charan is a commissioner for oaths. Since she did not know the full details of the accused person's siblings, she asked the accused to provide the information of her sibling which the accused did in writing. She further confirmed the accused person is a respected teacher in the area.
11. The next prosecution witness is Mr. Jayant Kumar who is a Managing Director of one of a business institutions in bar and a close friend of one of accused persons elder brothers. He testified that he knew the accused and she approached him to sign a statutory declaration on 27th of March 2008 which he signed because she was a civil servant and a teacher.
12. Mrs Makereta Sotutu is the fifth prosecution witness and she was a clerical clerk at the Registrar General's office in Lautoka. She was the officer who registered the late birth Registration number 1326617 which was presented by Elizabeth Reddy who is one of the accused person's elder sisters. She further testified that she found some discrepancies with the said application as their system picked out another registered person with the same name. However having satisfied with the supporting documents tendered by the informant, she proceeded with the registration and registered Mary Madgerllen Francis with date of birth as 18/11/1962. Moreover she stated that the

Registrar General has deleted the said late registration as later it was found it was a double registration.

13. The sixth prosecution witness is Chanel Tuisawau, an immigration officer who testified that the accused has made an application for a passport in which she has declared that she was born on 18 of November 1962. He stated that upon checking through its system he found another Mary Megderllen Prasad and that Mary had obtained a passport in 1987 and which has expired in 1997.
14. Mrs. Joan Bess Kingden gave evidence as next prosecution witness who is a former lecturer at Corpus Christi Teacher's College. In her evidence, she stated that she could recall the accused as one of her students from 1976 to 1978. She confirmed that she had not seen the accused ever since she graduated in 1978, but affirmatively identified the accused specially from a mark on her face which she remembered. Mrs. Kingden stated that it was not possible that 14 years old would be taken in by the school and confirmed that she could not recall such a student was in her class during that time. She further stated the qualification to enter into the teacher's college was New Zealand's School certificate or the New Zealand's university entrance certificate. With her teaching experience, she stated that the accused would have been in Form 3 or Form 4 at the age of 14.
15. Ilisapeci Vunisa is the eighth prosecution witness and who was the church secretary at the Vatukolua Catholic Church since 2003. She testified that sometimes after 2003, the accused approached her and asked her to sight the "Liber Baptizatorium" which contains information of the baptism of catholic children. Having sighted it, they found there is only one Mary Megderllen registered in 1955 by the priest. However the accused forcefully contended that her name was wrongly spelt and got the approval from Father Lemesio to make the spelling correction. She then searched the records for the year 1962 but could not find the accused person's name on it. The accused then

asked the priest to register her under 1962 for which she got approval. She herself wrote the details on the register under the year 1962.

16. Mr. Ledua Niubalavu is the ninth prosecution witness who was a teacher at Vatukoula Primary school and had known the accused as Mary Anthony. He stated that he was approached by the accused in 2009 to obtain a letter to confirm that she had attended Vatukoula Convent School. She wanted such letter for her to go overseas. Based on her and her brothers' assurance he wrote a letter to confirm this but did not check any official records of the school to confirm the information contained in that letter.
17. The next prosecution witness is Mr. Timoci Nalawai of Nilsen High School. He confirmed in his evidence that IP Abhay came to the school on 17th – 02- 2010 to obtain the school registration book which contains the admission details of the student of 1970 – 1980 which he obtained from him.
18. Mr. Joshua Anthony Francis was the eleventh prosecution witness who stated in his evidence that he had another sister by the same name as of accused person and she was adopted by his aunt while she was very small and never grown up with the family. He couldn't recall the date of birth of the accused person and specifically stated that he is the eldest siblings of a large family. The prosecution made an application to name this witness as hostile witness for the prosecution and pleaded to disregard the evidence of this witness.
19. The next prosecution witness is another brother of the accused who is Mr. Benjamin Francis. He recalled only one Mary Magderllen in his family that is the accused person. He could not recall whether the accused was born before him as he stated he had a big family.
20. The thirteen prosecution witness is D.S. Rashmi Das who is the investigation officer. Prior the commencement of D.C Das's evidence the accused counsel informed the court

that the accused is challenging the admissibility of the caution interview of the accused as prosecution evidence. Hence a voir dire hearing was conducted. At the conclusion of the voir dire hearing I accepted the admissibility of the record of the caution interview of the accused person as part of prosecution evidence in my ruling dated 11th of September 2011.

21. The investigation officer relates the facts pertaining to his investigation of this allegation. He stated that he uplifted certain documents such as birth certificates, teacher's registration certificate, ect from relevant institutions. The last prosecution witness is the charging officer of the accused person. She tendered the charging statement of the accused.
22. At the conclusion of the prosecution case, I hold that it appears to the court that a case is made out against the accused person sufficiently to require to make a defence in pursuant to section 178 of the Criminal Procedure Code.
23. The accused person gave evidence on oaths and she was extensively cross examined by the prosecution. In her evidence she stated that she is the youngest of her siblings and she has a sister who was born on the 18th of November 1955 with the same name as hers but the spelling of her name and the sister's is different. She stated that her name is spell as "Magderllen" and her sister's as "Megderllen". The sister who is born on the 18th of November 1955 was adopted by her aunt and has grown up away from the accused family.
24. The accused person stated that she had been using her sister's birth certificate as her birth was not registered and came to know about it when she met that sister at her daughter's wedding in 2004. She then stopped using the details of her sister and got one of her elder sisters to get her birth certificate registered as late registration with the date of birth as 11th of November 1962. She explained the circumstances that lead to

have two different marriage certificates of her with her husband where one of them contains her date of birth as 18th of November 1955.

25. In her cross examination, she stated that she started schooling at the age of 4 as she was sent to a catholic school and the date of birth was not materially required at her admission. She further testified that she was sent to the teacher's school by the father of her church and because of that her age was not required at the admission of the teachers' school.
26. She denied that she wrote the prosecution exhibit 20 asking the Ministry of Education to change her family name to her husband's family name. She blames her said sister of using her details specially her teacher's registration number with the ministry of education and stated that this sister is also a teacher.
27. The second defence witness is Mr. Devendra Kumar who is the husband of the accused person. He stated in his evidence that he came to know about this allegation when her spousal visa to Australia was rejected due to the prior registration of her birth as 18th of November 1955. He has then inquired from her family members and met the husband of the sister who had the same name as of the accused Mr. Vinod Prasad and their daughter Mamtha Pillay in Australia.
28. Mrs. Mammtha Pillay is the third defence witness. She gave evidence on skype from Australia with the consent of both parties. She categorically denied that the accused is her mother and affirmatively confirmed her father is Vinod Prasad and her mother is Mary Megderllen. Her parent has got separated when she was eight years old. Since then she has lived with her father. She used to meet her mother in the town occasionally but had not maintained a close relationship with her. She now has no knowledge of her whereabouts.

29. I now briefly outline the prosecution case in order to ascertain whether prosecution has proved the main elements of the offence of making false statement to obtain a passport. The prosecution is not only to require to prove that the accused person made a statement as her date of birth as 18th of November 1962 in order to obtain a passport but also she did so with the knowledge that date of birth is untrue.
30. The prosecution alleges that the accused was born on 18th of November 1955 and she later changed her date of birth as 18th of November 1962. The prosecution presented evidence that she has three birth certificates obtained in three different occasions. One of these three birth certificates contains her date of birth as 18th of November 1955 and others' as 18th of November 1962. Apart from these evidence prosecution tendered an admission book of Nelseen school and Liber Baptizatorium of the Vatukolua Catholic church as prosecution exhibits. Furthermore, the prosecution tendered three marriage certificates alleging that the accused had married previously once in 1982 and other is 1987 prior to her marriage with Mr. Devendra Kumar.
31. In respect of the first element of the offence, that the accused has made a statement that her date of birth is 18th of November 1962 to obtain a passport, I find that the accused person did not dispute and admitted that she provided that statement to the immigration office in order to obtain her passport No 654442.
32. I now turn to the second element of this offence, that the accused person had knowledge that her date of birth given to the immigration office is untrue. The prosecution's one of the main contentions is that if she was born in 1962 as she claimed, she would not be able to admit to the Corpus Christy teaching school in 1976. The prosecution alleged she would be 14 years of age at that time and would have been in secondary school in 1976. The prosecution further contended that the accused has been using both these dates of birth in various occasions and also she has used her name as Mary Megderllen and Magderllen.

33. In order to prove its contention that the accused was not born in 1962, the prosecution provided evidence that she has admitted to the teachers' school in 1976 and graduated as a teacher in 1978. Mrs. Kingden, a former lecturer at the teachers' school positively identified the accused person as one of her student during the period of 1976 to 1978 which the accused did not dispute. Apparently she admitted that she entered into the teachers' school in 1976 and graduated in 1978. Apart from that the prosecution called two brothers of the accused person and one of them is her elder brother Mr. Joshua Anthony Francis. The prosecution made an application to call Mr. Joshua as adverse witness to the prosecution and disregard his evidence. The other brother who is called for the prosecution is Mr. Benjamin Francis. However, he stated in his evidence that he could not properly recall whether he was born before or after the accused person and stated that for his knowledge he has only one sister by the name of Mary Magderllen. Nevertheless Mr. Joshua who was born in 1938 as the elder sibling of the family stated that one of his sisters who born in 1955 has the same name as of the accused but she was adopted by his aunt when she was very small and never grown up with the family.
34. In view of these evidence presented by the prosecution, I find that the prosecution has not provided direct evidence to prove that the accused was not born in 1962. The prosecution established that the accused admitted to the teachers college in 1976 and also presented evidence through Mrs. Kingden that under the normal circumstances the eligible age for the admission at the teachers' college is 18 year old and the required qualification for the admission is New Zealand school certificate. Mrs Kingden stated that under normal circumstances, a 14 years old student would be in form 3 or form 4 in the secondary school at that age.
35. The prosecution did not provide sufficient evidence to conclusively satisfy the court that the Corpus Christy teachers' college has only admitted student above the age of 18 as an admission rule and the students are required to prove their age at the admission. The prosecution merely called Mrs. Kingden who is only a former lecture at the college and gave evidence in her personal capacity than an official from the teacher's college. At this

point, I am mindful that the burden of proof lies with the prosecution and it is not shifting to the defence at any time of the hearing.

36. It was held in ***Woolmington v DPP (1935) AC 462***, that ‘*no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the accused, is part of the common law*’. Where the burden of proof, remains on the prosecution throughout the trial, in that circumstance, the accused need only to raise sufficient evidence to cast reasonable doubt on the issue”. (***Andrews & Hirst on Evidence” 4th Edition, pg 59***). Lord Goddard CJ in ***R v Summers (36, Cr. App R. 14 at 15 CCA)*** held that “*Jury before they convict, they must be satisfied so that they are sure of the guilt of the accused*”. Furthermore, it was held in “***R v Bentley (2001) 1 Cr App R 21***” that on reviewing all the evidence, if they were unsure or left in any reasonable doubt as to the accused’s guilt, that doubt must be resolved in the accused’s favour”.
37. The accused person, in her evidence, stated that she started schooling at the age of 4 and skipped 2 years during her schooling. She further stated that she went to a catholic school because her parents were devoted catholic. The age was not considered at her admission to the school and she finished her school at the age of 14. She was then sent to the Corpus Christi teachers’ college by the father of her church and because of that she was not required to provide her age at the admission.
38. Before I discuss the accused person’s explanation for her admission to the Corpus Christi teachers’ school, it is noteworthy to consider the judicial dicta of ***Lord Reading CJ in Abramovitch (1914) 84 L.J.K.B 397*** where the lordship held that “*if an explanation has been given by the accused, then it is for the jury to say whether on the whole of the evidence they are satisfied that the accused is guilty. If the jury think that the explanation given may reasonably be true, although they are not convinced that it is true, the prisoner is entitled to be acquitted, inasmuch as the crown would then have failed to discharge the burden imposed upon it by our law of satisfying the jury beyond*

reasonable doubt of the guilt of the accused. The onus of proof is never shifted in these cases; it always remains on the prosecution”.

39. In view of the aforementioned reasons and the judicial precedence, I am of the view that the prosecution has not established beyond reasonable doubt that the accused has entered the teachers' college at or above the age of 18 as per the admission requirement of the college and would not be able to admitted in 1976 if she was born in 1962. Moreover, the first prosecution's witness tendered his investigation report as prosecution exhibit, in which I find a photo copy of an application form for a post of teacher at the ministry of education as an annexure to the said report. The applicant who applied for that post of a teacher in that form has stated that her year of commencement of school as 1963. However there is no clear evidence from the prosecution to explain what is that application form, from where it was uplifted, whose data was in that form, and who is the author of the form. Wherefore, court could not be able for form any conclusion base on that document which contains in the said investigation report.
40. A mere existence of three birth certificates under the name similar to the accused person with two different dates of birth and three different informants, does not necessarily constitute that the date of birth given to the immigration by the accused is false to her knowledge.
41. I now turn to the prosecution exhibit 20 that is a copy of a latter allegedly written by Mary Megderllen to the Ministry of Education asking them to change her family name to the family name of her husband Mr. Vinod Prasad in 1982. The accused denied that she requested the Ministry of Education and authored that letter. However she admitted the teacher's registration number contains in that document as her. The accused alleges her sister by the same name as of her, Mary Megderllen for using her teacher's registration number. With these evidences before the court, a reasonable doubt arises

in my mind that would it be possible for two separate teachers to work in the Ministry of Education under the same registration number. I find again the onus goes to the prosecution to remove such doubts if the prosecution claimed that there is no two Mary Megdellen or Mary Magdellen. The prosecution should have presented evidence from the Ministry of Education that there are no such two teachers working under the Ministry.

42. Finally I draw my attention to the caution interview of the accused person. The accused person claimed in her evidence that she does not admit the answers that she has given during the second day of her caution interview. The admission of the accused person's caution interview as part of prosecution evidence at the *voire dire* hearing, does not necessarily constitute that the court has accepted the truthfulness of the confessional statement of the accused person in the caution interview. The burden is still on the prosecution to prove the truthfulness of the confessional statement of the accused person during the hearing. The conflicting nature on this issue was cleared in ***Wong Kam-ming v the Queen (1980) AC 247***, where ***Lord Edmund*** held "***if the Defendant denies the truth of the confession or some self incriminating admission contain in it, the question whether his denial is itself true or false cannot be ascertained until after the voir dire is over and the defendant's guilt or innocence has been determined by the jury***". The prosecution as I mentioned before had failed to provide proper conclusive evidence that the date of birth given by the accused person in her application to obtain a passport is not true to her knowledge. Only a mere existence of three birth certificates and marriage certificates with names similar as of the accused person does not prove the truthfulness of the confessional statement of the accused person in her caution interview. I accordingly disregard the caution interview of the accused person as it fails to remove the reasonable doubts that the court has in respect of this charge against the accused person.
43. In concluding my judgment, I am satisfied that the prosecution has not successfully proved that the date of birth given by the accused person in her application form to

obtain the passport No 654442 is untrue as to the knowledge of the accused person beyond reasonable doubt. I accordingly, hold the accused person is not guilty for this offence of "Making False Statement to Obtain a Passport" contrary to section 312 of Penal Code Act 17 and acquit from the same.

44. 28 days to appeal.

On this 17th day of March 2013.

R.D.R.Thushara Rajasinghe

Resident Magistrate, Suva.